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July 28, 2022

Via CM/ECF

Hon. Kevin J. McNulty, U.S.D.J.
Lautenberg U.S. Post Office & Courthouse
Federal Square
Newark, New Jersey 07101

Re: *United States ex rel. Khatchikian et al. v. Port Imperial Ferry Corp.*
Docket No.: 16-cv-2388-KM-AME

Dear Judge McNulty:

This law firm represents defendant Alan Warren (“Warren”) in this action. We write jointly with co-counsel for the other defendants in this action.

On October 7, 2021, the Court dismissed Counts 1-4 and 7-8 of the Plaintiffs’ Amended Complaint, without prejudice. (D.E. 39 at 1).¹ As to Count 6 of the Amended Complaint alleging the defendants violated the Clean Water Act, the Court denied Defendants’ motion to dismiss for lack of subject matter jurisdiction without prejudice and directed the parties to engage in jurisdictional discovery on that claim. (D.E. 39 at 2). The Court further explained that the dismissal was without prejudice to Plaintiffs filing a motion for leave to amend within 30 days after jurisdictional discovery is completed. *Id.* Further, the Court stated that if Plaintiffs do not file a motion for leave to amend within the 30 days, then “the dismissal will be converted to one with prejudice upon the application of any party.” *Id.*

The parties completed jurisdictional discovery. As memorialized in Judge Espinosa’s subsequent order, jurisdictional discovery closed on June 27, 2022. (D.E. 59 at 2). In that order, Judge Espinosa memorialized Plaintiffs’ representation that they do **not** intend to file a motion for leave to amend to cure the deficiencies identified by the Court in its decision dismissing Counts 1-4 and 7-8. *Id.*

Accordingly, because 30 days have now passed since the close of jurisdictional discovery, pursuant to the Court’s directive, Warren and co-defendants hereby apply to the Court to convert the dismissal of Counts 1-4 and 7-8 of the Amended Complaint

¹ Plaintiffs previously voluntarily withdrew Counts 5 and 9 with prejudice. (D.E. 38 at 8 n.4).

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to a dismissal with prejudice. We respectfully request that the Court enter an order memorializing this dismissal with prejudice. Should the Court require such a proposed order, defendants will promptly supply one.²

We thank the Court for its continued attention to this matter.

Respectfully submitted,

Mandelbaum Barrett PC

/s/ Brian M. Block

Brian M. Block

Counsel for Alan Warren

Baldassare & Mara, LLC

/s/ Jennifer Mara

Jennifer Mara

Counsel for NYWW Defendants

² Pursuant to Judge Espinosa's order, Warren and co-defendants will be filing their renewed motion to dismiss Count 6 on or before July 29, 2022. (D.E. 59 at 3).